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OCTOBER TERM, 1964

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178

BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,

Appellant,

vs.

JAMES W. DORSEY, DAN I. MACINTYRE, III, and
JAMES EDWARD MANGET,

Appellees.

On Appeal from the United States District Court for
the Northern District of Georgia.

MOTION TO AFFIRM

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July 9, 1964

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IN THE
Supreme Court of the United States

NO. 1213, OCTOBER TERM, 1964.

BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,

"Appellant,"

vs.

JAMES W. DORSEY, DAN I. MACINTYRE, III, and
JAMES EDWARD MANGET,

Appellees.

MOTION TO AFFIRM

Appellees, pursuant to rule 16 of the Revised Rules,
of the Supreme Court of the United States, move that
the final judgment and decree of the Three Judge Dis-
trict Court be affirmed on the ground that the question
is so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and
decree entered on April 6, 1964, by a district court of
three judges specially constituted pursuant to 28 U.S.C.
§2281 granting appellees' motion for summary judgment
and further holding that the statute of the State of Geor-
gia attacked by appellees was unconstitutional, null and
void as being in violation of the Equal Protection clause

of the Fourteenth Amendment and decreeing that each and every senator to the State Legislature for the State of Georgia shall be elected by the voters of his own district without regard to whether said senatorial district comprises an entire county or more than one county or less than one county.

The original suit was brought by three registered voters of the Atlanta metropolitan area in the United States District Court for the Northern District of Georgia against the Secretary of the State of Georgia and two other election officials. The plaintiffs below sought invalidation of a statute of the State of Georgia, which required that the State senators from senatorial districts consisting of less than one county had to be elected by all the voters of the county in which such senatorial district was located. Plaintiffs below also sought an injunction against the defendants to prevent them from applying the statute in question to elections for the State Senate.

ARGUMENT

The decision of the Court below is plainly correct. The statute under attack¹ presents the clearest example of different application of a law to different persons imaginable. In senatorial districts composed of one or more counties, the voters elect their own senator. In

¹Section 9 of the Senatorial Reapportionment Act of the General Assembly of the State of Georgia, approved October 5, 1962 (Ga. Laws, Sept.-Oct., 1962, Extra Sess., p. 7, at p. 30; Ga. Code Ann., Sec. 47-102), which provides in pertinent part that:

Each Senator must be a resident of his own Senatorial District and shall be elected by the voters of his own District, except that the Senators from those Senatorial Districts consisting of less than one county shall be elected by all the voters of the county in which such Senatorial District is located.

senatorial districts composed of less than one county (multi-district counties), the voters must join with voters from foreign districts to select a group of senators to represent the county as a whole.

This Court held in *Wesberry vs. Sanders*, 376 U. S. 1:

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

This Court reiterated this particular principle as recently as June 15, 1964, in *Reynolds vs. Sims*. (Numbers 23, 27 and 41, October Term 1963), and in that case this Court also said:

"Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."

Perhaps the most significant language ever used by this Court in addressing itself to the issue presently under consideration is that language found at page 379 of *Gray vs. Sanders*:²

"Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote — whatever their race, whatever their sex, whatever

their occupation, whatever their income, and wherever their home may be in the geographical unit. This is required by the equal protection clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters, but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State; when he casts his ballot in favor of one of several competing candidates underlies many of our decisions."

This Court has held on so many occasions that the Constitution of the United States protects the right of all qualified citizens to vote in state, as well as federal, elections that the cases hardly needs citation. Division II of the opinion in *Reynolds vs. Sims* provides a recent, thorough and convenient review of such decisions as *Ex parte Yarbrough* 110 U. S. 651, *United States vs. Moseley* 238 U. S. 383, and *South vs. Peters* 339 U. S. 276, 279, where it was held:

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government, and the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

The classic discussions of debasement is of course to be found in *Baker vs. Carr* 369 U. S. 186. Nor can discrimination be practiced merely by fabricating a sophisticated rather than a simple-minded discriminatory scheme. *Lane v. Wilson* 307 U. S. 268, 275 *Gomillion v. Lightfoot* 364 U. S. 339, 342 and *Wesberry*, supra.

CONCLUSION

The rationale of the decision below was that the essence of representative government is the choosing of a representative by those he represents. This rationale is surely demanded by the Constitution of the United States and the decisions of this Court in *Gray*, *Baker*, *Wesberry* and *Reynolds* to mention but a few. To reverse the decision of the Court below, as the appellant urges, would be to take a backward step in the area of protection of the right to vote under the Equal Protection Clause of the Fourteenth Amendment. Appellant has shown no valid reason why different categories of voters receive different treatment with regard to their vote for their State Senator and appellees respectfully submit that there is no substantial question presented for decision by this Court and the judgment and decree of the District Court should be affirmed.

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CERTIFICATE OF SERVICE

I, CHARLES A. MOYE, JR., one of the attorneys for Appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of July, 1964, I served a copy of the foregoing Motion to Affirm on the Appellant by mailing a copy in a duly addressed envelope with postage prepaid to his Counsel of Record, The Honorable Eugene Cook, Attorney General of the State of Georgia, 132 Judicial Building, 40 Capitol Square, Atlanta, Georgia.

CHARLE A. MOYE, JR.
Of Counsel for Appellees